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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,365	09/30/2003	Harley Pattee	HJP-105X2C2	5980
23557	7590	02/24/2005	EXAMINER	
SALIWANCHIK LLOYD & SALIWANCHIK A PROFESSIONAL ASSOCIATION PO BOX 142950 GAINESVILLE, FL 32614-2950			UPTON, CHRISTOPHER	
			ART UNIT	PAPER NUMBER
			1724	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/675,365

Applicant(s)

PATTEE, HARLEY

Examiner

Christopher Upton

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 19-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 19-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

1. Applicant's election without traverse of Invention I in the reply filed on December 17, 2004 is acknowledged.

2. Claim 70 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 70 is a method of manufacture claim improperly dependent on an apparatus claim. Such a claim fails to limit the structure claimed.

3. Claims 1-8 and 19-70 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims fail to recite a complete structure. A means for joining the panels and a means for sealing the panels to make the tank liquid tight should be recited.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7, 23-27, 33-37, 43-47, 58-60, 64, 65 and 68-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Torricelli in view of Warner or Carlson.

Torricelli discloses a septic tank made of a plurality of substantially flat panels, with a baffle and lid openings, substantially as claimed. Torricelli does not disclose that the parts are made of plastic. It is known to manufacture septic tanks having flat wall configurations out of plastic, as exemplified by Warner and Carlson. It would therefore have been obvious for one skilled in the art to make the tank of Torricelli out of plastic, for ease of assembly and to provide a lightweight tank.

6. Claims 1-3, 5, 23, 25, 33, 35, 43, 45, 58-60, 64, 65 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blanchard in view of Warner or Carlson.

Blanchard discloses a septic tank made of a plurality of substantially flat panels, with a baffle, substantially as claimed. Blanchard does not disclose that the parts are made of plastic. It is known to manufacture septic tanks having flat wall configurations out of plastic, as exemplified by Warner and Carlson. It would therefore have been obvious for one skilled in the art to make the tank of Blanchard out of plastic, for ease of assembly and to provide a lightweight tank.

7. Claims 50, 51, 54 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 46 and 47 above, and further in view of Perry.

Claims 50, 51, 54 and 55 differ from claims 46 and 47 in recitation of a PVC pipe internal support. It is known to use a PVC pipe to provide support to a septic tank, as exemplified by Perry. It would therefore have been obvious for one skilled in the art to add such a support to the septic tank of claims 46 and 47, to strengthen the tank.

8. Claims 62 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 59 above, and further in view of Lloyd or Osborne.

Claims 62 and 63 differ from claim 59 in recitation of the use of screws to connect the panels. It is well known to use screws to assemble a tank made of a plurality of panels, as exemplified by Lloyd and Osborne. It would therefore have been obvious for one skilled in the art to use screws to connect the panels of the septic tank of claim 59, to hold the tank together.

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-8 and 19-70 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,858,138. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims obviously comprise the subject matter recited by the instant claims.


11. The recitation of a septic tank comprising at least four substantially flat plastic panels with a tank flow inlet and outlet, and further comprising means for connecting the panels together in the form of a plurality of double channel angle connection brackets and a sealing means would patentably distinguish over the prior art, with the exception of the obviousness double patenting rejection over US Patent No. 6,858,138. While double channel angle connection brackets are known, as exemplified by Cocciemiglio and Kridle, they are used for assembling shipping crates, not for a liquid containing tank with a flow inlet and outlet, such as a septic tank. Therefore, there would be no motivation for one of ordinary skill in the art to combine a septic tank structure, such as disclosed by Torricelli and Blanchard, with the shipping crate assembly means of Cocciemiglio and Kridle.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. All references cited in the parent application have been made of record.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Upton whose telephone number is 571-272-1169. The examiner can normally be reached on 7:30-5:00, off every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, consisting of a stylized 'C' followed by a series of loops and a long horizontal stroke extending to the right.

Christopher Upton  
Primary Examiner  
Art Unit 1724